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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE MATTER OF ADOPTION OF)
T.E.D.F., JUSTIN NIEDBALSKI,)

Appellant-Respondent,)

vs.)

CHARITY BECKHAM and)
ERIC BECKHAM,)

Appellees-Petitioners.)

No. 71A03-0607-CV-319

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable Peter J. Nemeth, Judge
Cause No. 71J01-0512-AD-145

January 24, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Justin Niedbalski appeals the denial of his Motion Contesting Adoption Proceedings and the granting of Appellees' Motion to Adopt concerning the adoption of his biological child, T.E.D.F., by Eric Beckham. Niedbalski contends as the sole issue on appeal that the trial court erred in denying his motion and granting Appellees' motion to adopt without his consent. We affirm.

The facts favorable to the ruling are that Niedbalski is the biological father of T.E.D.F., who was born September 5, 2000. Charity Beckham is T.E.D.F.'s biological mother. T.E.D.F. was conceived while Charity and Niedbalski were still in high school. They never married. T.E.D.F. has lived with Charity his whole life. At some point, Charity married Eric Beckham, and Beckham commenced proceedings to adopt T.E.D.F. At this point, we review facts relevant to this appeal concerning Niedbalski's personal history.

When Niedbalski was approximately twelve or thirteen years old, he forced his then kindergarten-aged step-sister, N.K., to perform oral sex on him. That abuse continued on a regular basis for the next seven years, during which time N.K. performed oral sex on Niedbalski "hundreds of times." *Appellant's Appendix* at 7. Niedbalski eventually pled guilty to sexual misconduct with a minor as a class C felony in relation to those activities. While engaging in this behavior with N.K., Niedbalski by his own admission engaged in sexual intercourse with approximately thirty other people, with this activity commencing when he was twelve years old. When apprised by Charity that she was pregnant, Niedbalski, then fifteen years old, urged her to terminate the pregnancy.

When she refused to do so, he initially denied paternity. Charity permitted Niedbalski to visit T.E.D.F., but in the first nine or so months of T.E.D.F.'s life, Niedbalski did so only two or three times. She was unaware at the time that Niedbalski, then about sixteen years old, was molesting his minor step-sister. Initially, T.E.D.F.'s visits with Niedbalski occurred two or three times per month and lasted approximately two hours per visit. At some point, when T.E.D.F. was about one year old, Charity noticed blood coming from his rectum. She took him to a doctor who advised her to contact child protective services (CPS). Charity did not do so, however, because she believed Niedbalski would not sexually abuse T.E.D.F.

In the fall of 2001, Charity and T.E.D.F. moved in with Beckham, who was a police officer. At about this time, she began to allow T.E.D.F. to spend every other weekend with Niedbalski. Sometime later, after T.E.D.F. returned from one such visit, Charity asked him what he wanted to eat, and he responded, "pee pee", *Appellee's Appendix* at 23, and then acted embarrassed. That comment, coupled with the rectal bleeding previously noted, aroused Charity's and Beckham's suspicions. She contacted officials, and a representative of CPS advised Charity to take T.E.D.F. for therapeutic testing to determine whether he had been sexually abused. The test results indicated T.E.D.F. had not been abused, but that he had been exposed to inappropriate sexual material while in Niedbalski's care. Charity sought unsuccessfully to terminate Niedbalski's visitation rights. On October 1, 2004, the court determined that Niedbalski

should be allowed to visit T.E.D.F. on alternating weekends, and alternating Wednesday evenings.

When T.E.D.F. began full-weekend visitation with Niedbalski, Charity noticed that he began exhibiting behavioral problems, including disobedience at home and at school, and fighting at school. These problems were cyclical in nature, and coincided with visits with Niedbalski. Charity noted that T.E.D.F.'s behavior would improve as time passed after the visits, but would degenerate again with the next visit. During this time, unbeknownst to anyone but Niedbalski and his victim, Niedbalski continued to molest N.K. The last molestation incident occurred on March 6, 2005. A day or two later, N.K. informed someone of what had been happening. Niedbalski was arrested less than two weeks later and charged with child molesting and sexual misconduct with a minor. As indicated above, on September 1, 2005, he pled guilty to the latter charge and was sentenced to four years in prison, with three years suspended. While Niedbalski was in prison, on December 12, 2005, Charity and Beckham filed their petition for Eric to adopt T.E.D.F. On January 10, 2006, Niedbalski filed his motion contesting the adoption proceedings. Niedbalski was released from prison on March 3, 2006.

Following a hearing, the trial court granted Appellees' petition, as reflected in the following order:

ORDER APPROVING PETITION FOR ADOPTION

The Court having heard evidence on the Petition for Adoption now finds:

1. The adoption requested is in the best interest of the child.

2. Petitioners for adoption are of sufficient ability to rear the child and furnish suitable support and education.
3. The report of the investigation and recommendation under I.C. § 31-19-8-5 has been waived by this Court.
4. The written approval of a licensed child placing agency or county office of family and children for the placing of the child in the adoptive home has been waived by this court.
5. Proper notice of the petition for adoption, if necessary, has been given.
6. Proper consent, if necessary, has been given.

Appellant's Appendix at 40.

Niedbalski contends the trial court erred in denying his objection to the adoption and in granting the adoption petition without his consent. Upon reviewing a ruling in an adoption proceeding, we presume the trial court's decision with respect to adoption was correct, and the appellant bears the burden to demonstrate such presumption is incorrect.

In re Adoption of M.A.S., 815 N.E.2d 216 (Ind. Ct. App. 2004).

Generally, our adoption statutes require the biological parents' consent before a child may be adopted. *See* Ind. Code Ann. § 31-19-11-1 (West, PREMISE through 2006 Second Regular Session). One statute, however, enumerates exceptions to the general rule. *See* I.C. § 31-19-9-8 (West, PREMISE through 2006 Second Regular Session). The exception at issue in the instant case provides that consent is not required from a parent if:

- (A) a petitioner for adoption proves by clear and convincing evidence that the parent is unfit to be a parent; and
- (B) the best interests of the child sought to be adopted would be served if the court dispensed with the parent's consent.

I.C. § 31-19-9-8(a)(11). By statute, the party seeking adoption bears the burden of proving a parent's consent was unnecessary. I.C. § 31-19-10-1.2(a) (West, PREMISE through 2006 Second Regular Session). To meet that burden, the seeking party must demonstrate the elements of the statute by "clear and convincing evidence." *In re Adoption of M.A.S.*, 815 N.E.2d at 220. When reviewing such judgments, we "may not impose [our] own view as to whether the evidence is clear and convincing." *In re Guardianship of B.H.*, 770 N.E.2d 283, 288 (Ind. 2002). Rather, we must consider the evidence and inferences therefrom most favorable to the trial court's judgment and, without reweighing the evidence or reassessing the credibility of the witnesses, determine whether a reasonable factfinder could conclude there was clear and convincing evidence that consent was not required. *See In re Guardianship of B.H.*, 770 N.E.2d 283.

In the instant case, although the trial court entered findings, those findings do not illuminate its rationale for determining that Niedbalski's consent was not necessary. A review of the petition for adoption filed by Charity and Beckham and of the evidence presented at the hearing, however, clearly reflects that Niedbalski's unfitness as a parent was the basis for the contention that his consent was not required. Thus, it seems obvious that such was the trial court's rationale for ruling as it did. We therefore review to determine whether Charity and Beckham proved by clear and convincing evidence that Niedbalski is an unfit parent. *In re Adoption of M.A.S.*, 815 N.E.2d 216. This is necessarily a fact-sensitive inquiry. *See In re Adoption of C.E.N.*, 847 N.E.2d 267 (Ind. Ct. App. 2006) (concerning an inquiry whether the natural parent "fail[ed] without

justifiable cause to communicate significantly” within the meaning of I.C. § 31-19-9-8(a)(2)(A)).

As Appellees note, there is no statutory definition of “unfit”, as that term is used in I.C. § 31-19-9-8(11). Therefore, we must determine its meaning in this context. Words used in a statute that are not defined therein are given their plain, ordinary, and usual meaning. Ind. Code Ann. § 1-1-4-1(1) (West, PREMISE through 2006 Second Regular Session); *Doe v. Donahue*, 829 N.E.2d 99 (Ind. Ct. App. 2005), *trans. denied*, 838 N.E.2d 403; *cert. denied*, *Roe v. Donahue*, 126 S.Ct. 2320 (2006). When determining the plain and ordinary meaning of a statutory term, we may use language dictionaries as well as consider the relationship with other words and phrases. *Doe v. Donahue*, 829 N.E.2d 99. “Unfit” means unsuitable, not adapted to a purpose, or not sound. *Merriam-Webster’s Online Dictionary*, <http://www.m-w.com/dictionary/unfit> (last visited January 11, 2007). Even more to the point, *Black’s Law Dictionary* defines it in the family law context as “Morally unqualified, incompetent [e.g.,] the judge found her to be an unfit mother and awarded custody to the father”. *Black’s Law Dictionary* 1530 (7th ed. 1999). This strongly suggests that “unfit” in this context is intended to include both practical and moral components. That is, a parent is unfit within the meaning of the statute if his or her personal habits, behavior, or limitations would impact their parenting skills such that continued contact with their child would pose a danger to the child.

Evidence was adduced at trial that Niedbalski has chronic alcohol and drug-use problems, and that he has admitted using drugs since T.E.D.F. was born. More

problematic, however, is Niedbalski's history of sexual misconduct, and especially his serial sexual abuse of a minor relative. He admitted sexually abusing his step-sister for many years, commencing when she was a young child. It was also established at trial that T.E.D.F. had been exposed to pornography while staying with Niedbalski. In that context, Beckham's recounting of a particular incident involving T.E.D.F. is particularly disturbing. To review, shortly after returning from a visit with his father, T.E.D.F. had stated that he wanted to eat "pee pee." *Appellant's Appendix* at 23. We conclude that considering his sexual history, and specifically his long-standing history of sexually abusing a minor relative, the trial court did not err in concluding that Appellees proved by clear and convincing evidence that Niedbalski is an unfit parent.

Niedbalski does not challenge the second element necessary to waive consent under I.C. § 31-19-9-8(a)(11), i.e., that the best interest of the child would be served if the trial court dispensed with the need to seek a parent's consent. Neither does he challenge the granting of the petition to adopt on any ground other than the necessity of his consent under I.C. § 31-19-9-8. Accordingly, we affirm the decision to deny Niedbalski's motion to contest and Appellees' motion to adopt.

Judgment affirmed.

KIRSCH, C.J., and RILEY, J., concur.